

## **INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT NONRULE POLICY DOCUMENT**

Title: Applicable Requirements and Compliance Certifications for Part 70 Operating Permit Program

Identification Number: Air-0003-NPD

Date Originally Adopted: December 4, 1996

Dates Revised: None

Other Policies Repealed or Amended: None

Brief Description of Subject Matter: Describes IDEM's policy for situations where companies discover applicable requirements that are administratively or technically erroneous.

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy document may be put into effect by IDEM once the revised nonrule policy document is made available for public inspection and copying. IDEM will submit revisions to the Indiana Register for publication.

### **Background**

On July 21, 1992, the U.S. EPA promulgated final federal rules requiring states to develop and implement an Operating Permit program (Part 70) for major sources of air pollution. Among the requirements for the state Part 70 permit programs, applicants must identify all applicable requirements that apply to the source and describe the compliance status of the source with respect to the applicable requirements. The Office of Air Management (OAM) developed rules and procedures to carry out the Indiana Part 70 Operating Permit program and received Interim Approval from the U.S. EPA on December 14, 1995. Part 70 permit applications must be submitted to IDEM on or before December 13, 1996.

The Indiana Part 70 program is modeled after the federal requirements and includes the provisions requiring applicable requirement identification, compliance status description, and compliance certifications. The rules implementing Indiana's program require that Part 70 permit applications include the citation and description of all applicable requirements (326 IAC 2-7-4(c)(4)) and a description of the compliance status of the source with respect to all applicable requirements (326 IAC 2-7-4(c)(10)(A)). Sources that are not in compliance with one or more applicable requirements must include a compliance schedule with the application that describes the steps or measures a source will take to return to compliance (326 IAC 2-7-4(c)(10)(B)(iii)).

An applicable requirement as defined under Indiana rules includes federal requirements either adopted by or delegated to the states, state rules that have been approved by the U.S. EPA

and incorporated into the State Implementation Plan (SIP), and permit conditions included in either a permit required under a federal program (PSD, major New Source Review) or a federally approved state permit program.

IDEM is aware that there are rules and permit conditions that are incorrect, obsolete, or in error. Several sources have identified specific situations to the department and as companies near completion of their Part 70 permit applications, the department expects more of these situations may be identified. Sources have requested that IDEM make the necessary revisions or corrections and that IDEM provide guidance concerning what will be required in a Part 70 application regarding the noncompliance with these requirements.

In most cases, making the necessary corrections will be a lengthy process. For applicable requirements that are included in Indiana's SIP, revisions need to go through the state rulemaking process and then approved by the U.S. EPA as a SIP revision. Applicable requirements included as permits or permit conditions require modification of the permit with appropriate U.S. EPA approval and, if necessary, the Indiana SIP may also need to be revised. Revising a state rule typically takes from twelve to eighteen months. Review by U.S. EPA of a SIP revision will take additional time. A permit condition may be corrected in a revised permit, but will likely still have to go through review by U.S. EPA. There is clearly insufficient time to address these situations before Part 70 applications are due on December 13, 1996.

## **Policy**

This policy only applies to situations where an applicable requirement contains either an administrative error (for example, a typographical error that transposes two digits of an emission limit) or was based on a technical error (for example, the data or information used to establish the limit contained errors). While IDEM cannot disregard the existence of even incorrect requirements, the procedures set forth in this policy provide a way for sources to complete their applications with an acknowledgment from IDEM that an attempt will be made to change an erroneous requirement.

This policy does not apply to situations where, due to a modification or other change at a source, a source needs to request a revision to a rule or a modification of a permit condition. This policy also does not apply to situations where the rule does not contain an administrative or technical error and the source is not in compliance with the rule. For these situations (source modification, noncompliance), the source must document its noncompliance with the requirement and provide a schedule in the Part 70 permit application detailing how it will come into compliance (326 IAC 2-7-4(c)(10)(A)(iii) & (B)(iii)).

If a source discovers that units may not be in compliance with a specific applicable requirement and believes that the requirement is the result of an administrative or technical error, it should follow these steps:

1. Prepare and submit a letter to IDEM describing the applicable requirement, the issues involved with the noncompliance, and a request for the department to initiate the rule and SIP revision process. The letter and any supporting documentation should be directed to the Air Programs Branch, Office of Air Management and should be made to the attention of Janet McCabe, Branch Chief. The source should document why the applicable requirement is in error, either administratively or technically; the rationale for requesting a rule change; and provide as much information as necessary to assist the department in making its determination concerning a possible SIP revision.
2. If requested, submit additional information to assist the department in evaluating the request.
3. The request should be made prior to submission of the Part 70 application, if possible. However, if a source has not had the opportunity to submit a request prior to submitting a Part 70 permit application, then the source should submit the letter and any associated information with the Part 70 application and make clear in a cover letter that such a request is included. Sources should notify the department and submit the request for rule changes as soon as possible after discovering the situation, so that the department can provide the source with a determination on whether the rulemaking will or will not be initiated as quickly as possible.

The department will review the request for a rule revision and make an initial determination as to whether or not the rule contains an administrative or technical error. The department will notify the source of this initial determination in writing. Depending on when the source submits the rule revision request and what the initial determination by the department is, one of the following procedures will apply:

1. If the department agrees that a rule contains an administrative or technical error and rulemaking will be initiated, the source must do the following in its Part 70 permit application:
  - Include the citation of the applicable requirement to be revised on Form CD-01, Compliance Status.
  - Indicate that the source is not in compliance with the rule on the Source Compliance Certification, Form CD-05.
  - Include the letter from IDEM in response to the request for a rule revision as an attachment to the CD-04, Compliance Schedule.
  - Do not complete CD-04 in its entirety, the letter is your compliance schedule for the applicable requirement to be revised. The identifying information at the top of the form is all that should be completed.

2. If the department determines that there is no administrative or technical error in the rule that warrants revision, the source must do the following in its Part 70 permit application:

- Include the citation of the applicable requirement for which a revision was requested on Form CD-01, Compliance Status.
- If the source is not in compliance with the applicable requirement, complete the CD-04, Compliance Schedule to indicate what measures will be taken to return to compliance along with milestones to indicate when the measures will be completed.
- Indicate that the source is not in compliance with the rule on the Source Compliance Certification, Form CD-05.

A determination that a rule does not contain a technical or administrative error does not mean that the department will not undertake a rulemaking to revise it. In such cases, IDEM will follow the usual steps in evaluating a requested rule change, including air quality analysis and modeling where necessary. The source will still follow the procedure in #2 and should remain in contact with IDEM concerning the rulemaking process.

3. If the department has not responded to a request for rule revision prior to application submittal or if the company has not submitted a request prior to submitting the Part 70 permit application, the source must do the following in its Part 70 permit application:

- Include the applicable requirement for which a revision is being requested on the CD-01, Compliance Status form.
- Indicate that the source is not in compliance with the rule on the Source Compliance Certification, Form CD-05.
- Attach a copy of the letter requesting a rule revision to the CD-05 form. For those sources that have not previously submitted a letter and supporting information requesting a rule revision, this information should be provided with the application and a cover letter should be included stating that a request for a rule revision is included with the application.
- Include a Compliance Schedule, Form CD-04, and indicate that the measures to be taken to return to compliance are to request that the rule be revised.
- Revise the Part 70 permit application and submit the updated information to IDEM, if the department determines that the rule does not contain an administrative or technical error. The primary application revision would be revising the Compliance Schedule (CD-04) to indicate what measures or actions will be implemented in lieu of the rule change. There should be no need to revise the Compliance Status form (CD-01), because the applicable requirement and the compliance status of the source with the requirement would not change. In the event the CD-01 form does include an error or the department has determined the appropriate applicable requirement has not been cited, the source would need to revise and submit the corrected form as an update to the application.

There may be instances where rule revisions are not approved by the U.S. EPA, where the U.S. EPA disapproves the SIP revision, or where IDEM determines, after further review, that a rule revision is not appropriate prior to the issuance of the final Part 70 permit. Since the final Part 70 permit must include the applicable requirements that are in effect at the time of permit issuance, if the revised rule is not approved by the U.S. EPA, the source will likely have to update the application to address the applicable requirement for which a revision was requested. This may also require the preparation and submittal of a compliance schedule if the source will not be in compliance with the current applicable requirement at the time of permit issuance.

When reviewing the Part 70 permit applications, the department will not object to applications that do not include a compliance schedule where IDEM agrees to proceed with rulemaking. IDEM will also not object to the inclusion of a Compliance Schedule with references to rulemaking and rule changes as the means to return to compliance unless IDEM has already determined that the rule is correct. In both cases, the application will be deemed complete. The determination of completeness will result in the “application shield” as provided under 326 IAC 2-7-3. The “application shield” will stay in effect until final action is taken on the permit application, as long as responses to requests for information are provided within the time established by the department. The source will be subject to enforcement for any applicable requirement that has been included with a request for a rule change until final rulemaking has been completed and the SIP revision is approved by the U.S. EPA. Any questions about this policy should be directed to Roger Letterman at 317/232-8342.